No. 85-1804

In The
Supreme Court of the United States
October Term, 1985

THOMAS WEST,
Petitioner,

v.

CONRAIL, a foreign corporation;
BROTHERHOOD OF MAINTENANCE OF WAY
EMPLOYEES: LOCAL 2906, a foreign corporation;
NEW JERSEY TRANSIT, a corporation of
the State of New Jersey;
and ANTHONY VINCENT,
Respondents.

BRIEF ON BEHALF OF RESPONDENT NEW JERSEY TRANSIT CORPORATION

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COUNTER-STATEMENT OF QUESTION PRESENTED

Did the Court of Appeals for the Third Circuit correctly affirm the District Court's dismissal of Petitioner's hybrid breach of contract/breach of duty of fair representation action based upon Petitioner's failure to satisfy the requirements of the applicable statute of limitations, 29 *U.S.C.* § 160(b)?

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BRIEF ON BEHALF OF RESPONDENT NEW JERSEY TRANSIT CORPORATION

COUNTER-STATEMENT OF THE CASE

The pertinent facts with respect to the issue before this Court were never in dispute. Petitioner Thomas West was employed by Respondent Consolidated Rail Corporation ("Conrail") as a mechanic from February 9, 1981, until his discharge on November 27, 1981 (A.16).* Conrail

*"A." refers to the Appendix attached to the Petition for a Writ of Certiorari. Because the relatively few material facts in this case are undisputed and are contained in the decisions of the Third Circuit and District Court below, this Court granted Petitioner's motion to waive the filing of an appendix.

discharged Petitioner for possession of alcoholic beverages while riding in a company truck. On February 9, 1984, Conrail reinstated Petitioner by reducing his discharge to a suspension without back pay (A.16). He subsequently transferred to and has since been working for Respondent New Jersey Transit Corporation, created by the New Jersey Legislature to provide public transit service. *N.J.S.A.* 27:25-1 *et seq.*

On September 24, 1984, Petitioner filed a complaint in the United States District Court for the District of New Jersey alleging that Conrail breached the collective bargaining agreement and that his union, Respondent Brotherhood of Maintenance of Way Employees, Local No. 2906, breached its duty of fair representation in not processing his grievance against Conrail (A.3). Respondent New Jersey Transit Corporation was joined in the complaint based on an allegation that it was the successor to Conrail. The complaint was not mailed to the various defendants until October 11, 1984, and receipt of the summons was acknowledged by the various defendants between October 12, 1984 and October 22, 1984. Petitioner conceded, and all parties agreed for purposes of the action below, that the latest date on which Petitioner learned of the alleged breach of the duty of fair representation was on March 25, 1984 (A.3, 17).

In *DelCostello v. Teamsters*, 462 *U.S.* 151 (1983), this Court determined that the limitations period applicable to a "hybrid action" involving an alleged breach of contract by an employer and a breach of the duty of fair representation by a union is that contained in Section 10(b) of the National Labor Relations Act, 29 *U.S.C.* § 160(b) ("Section 10(b)"), which requires filing and service of a complaint within six months of accrual of the cause of action. Because service was not effected by Petitioner within six months of accrual, all Respondents moved for summary judgment on the ground that Petitioner failed to comply with the applicable statute of limitations.*

The District Court granted Respondent's motion for summary judgment because Respondents were not served within six months as required by Section 10(b) (A.14-17). The Court of Appeals for the Third Circuit affirmed, ruling that the borrowed limitations statute, Section 10(b), plainly requires both filing and service of process within six months of accrual of the claim. *West v. Conrail*, 780 *F.*2d 361, 363 (3rd Cir. 1985); (A.3, 6). The court below rejected Petitioner's argument that the service requirement of Section 10(b) should be ignored and instead be replaced by the service provisions of the Federal Rules of Civil Procedure, which Petitioner contended would toll the running of the applicable statute of limitations at the time of the filing of the complaint. The Third Circuit noted that the Section 10(b) filing and service requirements constituted a balance by Congress of the need for prompt resolution of labor disputes with the goal of assuring adequate representation of employees, the same interests at stake

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*While labor relations between Petitioner, his union and employer are governed by the Railway Labor Act, 45 *U.S.C.* § 151, *et seq.*, not the National Labor Relations Act ("NLRA"), the Third Circuit in *Sisco v. Conrail*, 732 *F.*2d 1188 (3rd Cir. 1984), ruled that the Section 10(b) limitation period adopted by this Court in *DelCostello v. Teamsters* also applies to fair representation claims arising under the Railway Labor Act. Petitioner does not dispute that the six month limitation period applies to this case (Pb13).

in a "hybrid" breach of contract/breach of the duty of fair representation action. 780 *F.*2d at 363-364: (A.6). The court below found that "grafting Fed. Rule Civ. Proc. 4(j) onto 10 (b) . . . would increase the time limit for initiation of the dispute resolution process from six to ten months, a substantial addition," contrary to the Congressional policy favoring prompt resolution of labor disputes. *Id.*

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SUMMARY OF ARGUMENT

Under *DelCostello v. Teamsters*, 462 *U.S.* 151 (1983), the statute of limitations for a "hybrid" breach of contract/breach of duty of fair representation action is Section 10(b) of the NLRA, which unambiguously requires both filing and service within six months of accrual of the cause of action. The same considerations mandating strict adherence to the Section 10(b) filing and service requirements in unfair labor practice cases, the national interest in prompt resolution of labor disputes, warrants adherence to the adopted statute's filing and service requirements in the context of a fair representation action. The decision below is consonant with well established principles concerning application of borrowed statutes of limitation. Where service is an integral part of a borrowed statute of limitations, the borrowing includes both the statute's filing and service requirements.

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ARGUMENT

POINT I

THE DECISION BELOW IS A LOGICAL EXTENSION OF DELCOSTELLO, AND IS IN COMFORMITY WITH THE CONGRESSIONAL POLICY FAVORING RAPID RESCLUTION OF LABOR DISPUTES.

In *DelCostello v. Teamsters, supra*, this Court ruled that the applicable limitation period for purposes of a hybrid breach of contract/breach of duty of fair representation action against an employer and a union is governed by Section 10(b) of the National Labor Relations Act, 29 *U.S.C.* § 160(b), which provides in pertinent part:

> [N]o complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the Board *and the service of a copy thereof upon the person against whom such charge is made*. . . . [Emphasis supplied].

Congress unambiguously required both filing and service of a charge within the prescribed six month period. *Gallon v. Levin Metals Corporation*, 779 *F.*2d 1439, 1441 (9th Cir. 1986), cert. pending, No. 85-1835; *NLRB v. Local 264, Laborers International Union*, 529 *F.*2d 778, 782 (8th Cir. 1982). Based on this plain language of the applicable statute of limitations, the majority of courts addressing the issue have applied the Section 10(b) service requirement to hybrid fair representation actions, in accordance with the decision below. *Gallon v. Levin Metals Corporation, supra; Williams v. Greyhound Lines, Inc.*, 756 *F.*2d 818 (11th Cir. 1985); *Dunlap v. Lockheed Georgia Co.*, 755 *F.*2d 1543 (11th Cir. 1985); *Simon v. Kroger*, 743 *F.*2d 1544 (11th Cir. 1984), *cert. denied, — U.S.* —, 105 *S.Ct.* 2155,

85 *L.Ed.*2d 511 (1985); *Howard v. Lockheed Georgia Co.*, 742 *F.*2d 612 (11th Cir. 1984); *Waldron v. Motor Coils Manufacturing Co.*, 606 *F.Supp.* 658 (W.D.Pa. 1985); *Thompson v. Ralston Purina Co.*, 599 *F.Supp.* 756 (W.D. Mich. 1984); *Hoffman v. United Markets, Inc.*, 117 *L.R.R.M.* 3229 (N.D. Cal. 1984); *Dziekan v. Entenmann's, Inc.*, No. 85-C9544 (N.D. Ill., June 2, 1986); *Taylor v. Pathmark*, No. 85-4253 (E.D. Pa., Jan. 10, 1986).*

The court below rejected Petitioner's argument that Federal Rule 4(j), which allows for completion of service within 120 days of filing a complaint, should be grafted onto Section 10(b) for hybrid fair representation actions, enabling a plaintiff in such an action to wait up to ten months before effecting service. The court below reasoned that failure to apply both the filing and service requirements of Section 10(b) in actions of this type would be inconsistent with the purposes for borrowing this limitations statute. 780 *F.*2d at 363-364; (A.5-6). A review of the Congressional intent in enacting Section 10(b), as well as this Court's decision in *DelCostello* and in other labor cases, demonstrates the correctness of the reasoning of the court below.

This Court has found that Congress enacted the six month service and filing requirement of Section 10(b) in order:

> [T]o bar litigation over past events "after records have been destroyed, witnesses have gone elsewhere, and recollections of the events in question have become dim and confused," . . . and of course to stabilize existing bargaining relationships.

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*Copies of these two unreported decisions will be forwarded if this Court wishes to review them.

Local No. 1424, International Association of Machinists v. NLRB, 362 *U.S.* 411, 419 (1960), *quoting* HR Rep. No. 245, 80th Cong., First Sess., p. 40. The statute's six month limitation period for both the service and filing of a charge is designed to prevent industrial instability "by allowing parties after the time prescribed as reasonable to assess with certainty their liability for past conduct." *NLRB v. Complas Industries, Inc.*, 714 *F.*2d 729, 732, n.1 (7th Cir. 1983), *quoting NLRB v. Auto Warehousers, Inc.*, 571 *F.*2d 860, 863 (5th Cir. 1978). Congress required service within six months "to give alleged violators the opportunity to prepare defenses and protect them against stale claims." *NLRB v. McCready & Sons, Inc.*, 482 *F.*2d 872, 875 (6th Cir. 1973).

This Court has long recognized that rapid disposition of labor disputes is a primary tenet of national labor policy, as expressed in Section 10(b). *DelCostello v. Teamsters, supra*, 462 *U.S.* at 168; *United Parcel Service v. Mitchell*, 451 *U.S.* 56, 63 (1981); *United Auto Workers v. Hoosier Cardinal Corp.*, 383 *U.S.* 696, 707 (1966). Thus, in selecting the Section 10(b) limitations period, this Court emphasized that NLRA unfair practice claims and hybrid breach of contract/breach of fair representation claims not only involve similar rights,* but also involve similar timeliness concerns. *DelCostello, supra*, 462 *U.S.* at 164, 169-71. Because of the national policy favoring expedited resolution of labor disputes, this Court rejected borrowing for

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*The interrelationship between rights under the NLRA and the duty of fair representation is underscored by the fact that "the NLRB has consistently held that all breaches of a union's duty of fair representation are in fact unfair labor practices." *DelCostello, supra*, 462 *U.S.* at 170.

fair representation actions a three year state limitation period for legal malpractice, reasoning:

> [T]he grievance and arbitration procedure often processes disputes involving interpretation of critical terms in the collective-bargaining agreement affecting the entire relationship between company and union. . . . This system, with its heavy emphasis on grievance, arbitration, and the 'law of the shop,' could easily become unworkable if a decision which has given 'meaning and content' to the terms of an agreement, and even affected subsequent modifications of the agreement, could suddenly be called into question as much as [three] years later.

DelCostello, supra, 462 *U.S.* at 169, *quoting United Parcel Service v. Mitchell,* 451 *U.S.* at 63-64. Thus, the court below correctly found that the "balance struck by Congress and recognized in *DelCostello,*" reflected in the language of Section 10(b), would be upset if the service requirement was ignored. 780 *F.*2d at 363; (A.6). Just as in an unfair practice case the expression of federal labor policy in Section 10(b) mandates strict adherence to both the filing and service requirement, *NLRB v. Preston H. Haskell Co.,* 616 *F.*2d 136, 142 (5th Cir. 1980), so too in a fair representation suit, a cause of action "implied under the scheme of the National Labor Relations Act," is it appropriate to adhere to the Section 10(b) provisions. *DelCostello, supra,* 462 *U.S.* at 169. As determined by Congress, parties to labor agreements are entitled to know by the end of six months if their decisions are going to be challenged.

Petitioner contends that the aforementioned policy reasons favoring application of both the filing and service requirements of Section 10(b) to an action of this type are

"vastly overstated" (Pb14). Petitioner first contends that if a union or employer wishes to discard records concerning a grievance, "it could call the district court immediately after the six months has run to learn whether a complaint has been filed against it." (Pb14). The unfeasibility of this remarkable statement is obvious, as the court system would be greatly overburdened if employers and unions followed this suggestion in only a small fraction of the vast number of grievances and arbitrations which arise in an industrial setting. Further, this suggestion does not even address the problem of potential witnesses changing jobs in a fluid economy.

More substantively, Petitioner relies on the dissent of Judge Gibbons below in contending that under Section 10(b), even after an unfair practice charge has been received, a respondent does not know whether the NLRB will actually issue an unfair practice complaint. However, as noted by the majority of the court below in response to this assertion, "it is the filing and service of the charge that notifies the employer of the charge and initiates the dispute resolution process. . . ." 780 *F.*2d at 363; (A.6). Receipt of an unfair practice charge has the salutary effect of enabling the employer or union to maintain documents relevant to the claim.

Without any reference to the record in this case, Petitioner attempts to argue that purported difficulties in effecting service within six months "would endanger the enforcement" of the duty of fair representation (Pb15). However, a cursory examination of these supposedly serious obstacles demonstrates the hollowness of this claim. The six month limitation period on filing and serving a fair representation complaint is significantly longer than

most of the state limitation statutes applied by federal courts prior to *DelCostello,* and presents enough time even for those "unsophisticated in collective bargaining matters" to bring a claim. Contrary to Petitioner's suggestion, serving defendants in a hybrid fair representation action is not a complex matter, replete with "vagaries" (Pb19). Defendants in a fair representation action are not unknown entities, but rather consist of the union which has represented the plaintiff as bargaining agent (a union of which a typical DFR plaintiff is in all likelihood a member) and the plaintiff's employer. All that a DFR plaintiff needs to do in order to perfect service is to mail a summons, complaint and acknowledgement form to his or her union and employer after filing the complaint, pursuant to Federal Rule 4(c)(2)(C).* Indeed, in the instant matter, while Petitioner does not even attempt to explain why he waited from September 24, 1984, until October 11, 1984, to mail a summons and complaint to Respondents, service was effected by mail without any apparent difficulty (A.3, 17).

Without any reference to the record in this matter, Petitioner speculates that defendants in fair representation actions might be tempted to avoid service (Pb19). However, the undisputed facts of this case are contrary to

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*As will be argued in greater detail in Point II of this Brief, the Federal Rules of Civil Procedure concerning methods of service would still be applicable to fair representation cases under the rationale of the decision below. *Cf. Hanna v. Plumer,* 380 *U.S.* 460 (1965); *Morse v. Elmira Country Club,* 752 *F.*2d 35, 38 (2nd Cir. 1984). As also will be discussed in Point II of this Brief, Petitioner's related contention that the decision below requires adoption of the panoply of NLRB procedural requirements for unfair practice charges, even when in conflict with the Federal Rules, is unfounded.

this conjuncture, as service was acknowledged by all four Respondents in this matter within 12 days (A.3, 17). Moreover, Federal Rule 4(d)(2)(D) provides for penalties for failure of a defendant to complete and return a mailed acknowledgement of service.

Petitioner contends that adoption of the Section 10(b) service requirement would mean that procedures in the Federal Rules permitting service by mail "would be virtually useless," because defendants who receive an acknowledgement of service form have 20 days to send a reply (Pb19). However, in federal cases involving borrowed statutes of limitation where service is an integral part of the limitation period, service is effective under Federal Rule 4(c)(2)(C)(ii) when the summons and complaint are received. *Morse v. Elmira Country Club,* 752 *F.*2d 35, 38-41 (2nd Cir. 1984); *Deshmukh v. Cook,* 630 *F.Supp.* 956, 958 (S.D.N.Y. 1986). The case relied upon by Petitioner in support of his claim that the decision below would render Federal Rule 4(c)(2)(C)(ii) ineffective, *Sieg v. Karnes,* 693 *F.*2d 803 (8th Cir. 1982), has nothing to do with the ability of a fair representation plaintiff to complete service by mail. Rather, *Karnes* involved invalidation of personal service of process because it was conducted in a manner which directly violated the applicable Federal Rule of Civil Procedure.

In sum, the decision of the court below is a logical extension of this Court's holding in *DelCostello.* Allowing a plaintiff in a fair representation case to wait up to ten months after accrual of a cause of action to serve the defendant union and employer would be contrary to federal labor policy favoring rapid resolution of labor disputes, as

expressed by Congress in Section 10(b). The decision below in no sense impairs the ability of employees to enforce the duty of fair representation in federal courts.

POINT II

BECAUSE SERVICE IS AN INTEGRAL PART OF THE BORROWED STATUTE OF LIMITATIONS FOR HYBRID BREACH OF CONTRACT/BREACH OF DUTY OF FAIR REPRESENTATION ACTIONS, THE COURT BELOW PROPERLY APPLIED THE SERVICE REQUIREMENT.

Petitioner's primary argument is that the decision of the Third Circuit to apply both the Section 10(b) filing and service requirement to a hybrid fair representation action constitutes a departure from the purported normal federal rule that filing a complaint satisfies the statute of limitations (Pb7-10). This central contention of Petitioner is flawed for a variety of reasons.

First, as conceded by Petitioner, it is by no means settled that in federal question cases, the mere filing of a complaint in federal court tolls the applicable statute of limitations. As noted by this Court:

> "Rule 3 simply provides that an action is commenced by filing the complaint and has as its primary purpose the measuring of time periods that begin running from the date of commencement; the rule does not state that filing tolls the statute of limitations." 4 C. Wright and A. Miller, *Federal Practice and Procedure* § 1057, p. 191 (1969) (footnote omitted). . . .

Walker v. Armco Steel Corp., 446 *U.S.* 740, 751, n.10 (1980). Petitioner can hardly claim that the decision below creates an exception to a "general rule" when this

Court has expressly left open the question of whether the mere filing of a complaint based on a federal cause of action tolls the applicable limitations period.

More significantly, Petitioner's contention that outside the fair representation area, Rule 3 of the Federal Rules determines when a statute of limitations is tolled for a federal claim is plainly in error. While Petitioner is correct that lower courts have generally held that filing a complaint tolls the applicable statute of limitations in a federal question case, this general rule does not apply where the applicable statute requires that an action be both filed and served within the limitations period. Not one of the cases relied upon by Petitioner for the proposition that Rule 3 of the Federal Rules governs the tolling of the limitations period involved application of a statute which required more than simple filing to commence an action (Pb7-8). In federal question cases, where the applicable federal statute poses additional requirements in order to commence an action beyond the mere filing of a complaint, such statutory provisions "are controlling and the application of Rule 3 is not involved." 4 C. Wright and A. Miller, *Federal Practice and Procedure* § 1056, p. 177 (1969). *See also* Note, "Commencement and Tolling", 66 *Cornell L. Rev.* 847, 854, n.78 (1981). Thus, in *United States v. Matles*, 356 *U.S.* 256 (1958), this Court held that where an affidavit of good cause was a statutory prerequisite to initiating an action under a federal immigration statute, the timely filing of the complaint without such an affidavit did not toll the limitations period. *See also Burrell v. LaFollette Coach Lines*, 97 *F.Supp.* 279 (E.D. Tenn. 1951) (statute of limitations not tolled by mere filing in an action brought under the Fair Labor Standards Act of 1938, 29

U.S.C. § 256, where the Act requires both filing and written consent of named plaintiffs in order to commence an action).

Moreover, in cases involving borrowed statutes of limitation, this Court has long held that where service upon an adverse party is an "integral part" of the adopted statute, the borrowing embraces both the filing and service requirements of the statute. *Walker v. Armco Steel Corp., supra; Ragan v. Merchants Transfer and Warehouse Co.,* 337 *U.S.* 530 (1949). While *Walker* and *Ragan* were diversity cases, which touch upon different considerations than federal question cases such as the instant matter, this Court has applied tolling provisions of borrowed statutes of limitations in actions arising under federal law as well. In *Board of Regents v. Tomanio,* 446 *U.S.* 468 (1980), a case based on a federal statute, 42 *U.S.C.* § 1983, this Court reaffirmed the practice not only of borrowing the most analogous state limitation period where the applicable federal statute has no particular limitation provision to govern actions under the right, but also of borrowing the tolling provisions contained in the adopted state statute. Similarly, in *Johnson v. Railway Express Agency,* 421 *U.S.* 454 (1975), an action based on 42 *U.S.C.* § 1981, this Court adopted the tolling provisions of a borrowed state statute of limitations, stating:

> Any period of limitation . . . is understood fully only in the context of the various circumstances that suspend it from running against a particular cause of action . . . . In virtually all statutes of limitations the chronological length of the limitation period is interrelated with provisions regarding tolling, revival and questions of application.

Id., 421 *U.S.* at 463-464. *See also Chardon v. Fumero Soto,* 462 *U.S.* 650 (1983) (local tolling rule, as well as limitations period, borrowed in an action brought under 42 *U.S.C.* § 1983)*; *Wilson v. Garcia,* — *U.S.* —, 105 *S.Ct.* 1938, 1943, 85 *L.Ed.*2d 254, 262 (1986) (in which this Court noted that while the characterization of a federal claim for purposes of adopting a limitations provision is a question of federal law, "the length of the limitation period, and closely related questions of tolling and application" are governed by the borrowed statute).

While the situation presented in the instant matter is unusual in that it pertains to a borrowed federal, not state, statute of limitations, under the principles set forth in *Tomanio* and *Johnson,* there is no reason why a service requirement integral to the borrowed federal limitations statute should be ignored. Indeed, as the instant matter concerns a limitations period borrowed from a federal enactment which addresses rights and procedural considerations "very similar" to those involved in a fair represen-

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*Petitioner may attempt to distinguish *Tomanio, Johnson v. Railway Express Agency,* and *Chardon,* in that they all are civil rights cases to which the provisions of 42 *U.S.C.* § 1988 applied, a statute which directs federal courts to follow a three step process in determining the rules of decision applicable to claims under the Reconstruction Civil Rights Acts. However, this Court has recently noted that the provisions of 42 *U.S.C.* § 1988 are simply a Congressional codification of the long-standing practice of federal courts to borrow a time limitation if it is not inconsistent with federal policy to do so. *Wilson v. Garcia, supra,* 85 *L.Ed.*2d at 260. Moreover, while no decisions of this Court are directly on point, in federal question cases not involving claims to which 42 *U.S.C.* § 1988 applied, lower courts have borrowed not only the most analogous state limitations period, but also the state tolling provisions. *See, e.g., Blair v. Page Aircraft Maintenance, Inc.,* 467 *F.*2d 815, 819-820 (5th Cir. 1972); *Kronfeld v. First Jersey National Bank,* 638 *F.Supp* 1454, 1475 (D.N.J. 1986).

tation action, adopting the Section 10(b) service provision is especially appropriate.

Finally, Petitioner argues that the decision below should be reversed because it will "plunge the district courts into NLRB practice" in such areas as the method of service, accrual of a claim, and determination of when a new claim relates back to a claim in the original complaint (Pb20-23). This contention is plainly incorrect. First, the court below followed this Court's direction in *DelCostello* to borrow the limitations period contained in a federal *statute*. Nothing in the decision below indicates that the panoply of NLRB procedural rules must also be adopted for hybrid fair representation actions. Borrowing the Section 10(b) limitations period in no sense binds federal courts to NLRB interpretations of the statute. In fact, it is the NLRB which is required to conform its own procedures to federal court rules as much as practicable. *NLRB v. Jacob E. Decker & Sons*, 569 *F.*2d 357, 362 (5th Cir. 1979). Moreover, unlike the express service requirement of Section 10(b), the purportedly unique NLRB procedures not only are not "integral" to the Section 10(b) limitations provision, they are not even mentioned in the borrowed statute.

Secondly, in federal question cases involving borrowed statutes of limitation, it is a matter of *federal* law (not borrowed local law) as to when a cause of action accrues, *Cope v. Anderson*, 331 *U.S.* 461, 464 (1947), and as to whether amendments to a complaint relate back to the time of the filing of the original pleading. *Welch v. Louisiana Power and Light Co.*, 466 *F.*2d 1344 (5th Cir. 1972). Similarly, this Court's decision in *Hanna v. Plumer*, 380

U.S. 460 (1965) demonstrates the fallacy in Petitioner's contention that the decision below would require utilization of NLRB methods for completion of service in fair representation actions, instead of utilizing procedures contained in Federal Rule 4(c).

Just as Petitioner's lengthy argument concerning the burdens faced by a DFR plaintiff resulting from the decision below masks the simple fact that all a DFR plaintiff needs to do to initiate an action is to mail a summons and complaint after filing, so too does Petitioner's lengthy discussion concerning differences between NLRB and federal court practice obfuscate the procedural implications of the decision below. Contrary to Petitioner's suggestion (Pb23), there is simply nothing in the decision below requiring federal courts to apply NLRB procedural rules "lock, stock and barrel" which are inconsistent with federal court practice.

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CONCLUSION

For the foregoing reasons, Respondent New Jersey Transit Corporation respectfully submits that the judgment of the Court of Appeals for the Third Circuit should be affirmed.

Respectfully submitted,

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